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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8889 OF 2007

Mahapalika Arogya Seve Karmchari
Mumbai & ors. ...Petitioners

V/s.

Municipal Corporation of Greater Mumbai
& others. ...Respondents

Mr.Prakash Devdas for the Petitioners
Mr.A.s.Bhor for BMC

CORAM : B.H.MARLAPALLE,J.
DATED : 5th December, 2007

P.C.

. Heard Mr. Prakash Devdas,the Learned Counsel for the Petitioners. Petitioner No. 1 is the union claiming to represent the Multi Purpose workers like the Petitioners No. 2 to 5. Petitioner No. 2 to 5 came to be engaged as multi purpose workers in the pay scale of Rs. 1015-1525. Complainant No. 2 Satish Kerlikar was appointed on 1-11-1993, Complainant No.3 Dhananjay Naik on 1-11-1993, Complainant No.4 Krishnakant on 1-12-1993 and Complainant No.5 Yeshwant Bhandare on 1-9-1995. They claimed that they were not paid wages from October 1996 till the date of their termination i.e. 1-2-1997. They further stated that the termination of service

w.e.f. 1-2-1997 amount to retrenchment as defined under the Industrial Disputes Act, 1947 and the said Act was in breach of the mandatory provisions of Section 25F of the said Act. On all these grounds the Petitioners approached the Labour Court at Mumbai in Comp(ULP)No. 85/1997.

2. Initially by judgement and order dated 31-7-2001 the complaint was allowed and Complainant no. 2 to 5 were directed to be reinstated with continuity of service and backwages in the post of Multi Purpose workers. This order was challenged before the Industrial Court in Revision Application Nos. 40/2002 and 31/2002. Both the Revision Applications were allowed by the Industrial Court on 1-10-2007 and the order passed by the Labour Court was quashed and set aside. Complaint(ULP) No. 85/1997 was remanded for fresh trial to the Labour Court and by confirming the findings that there was no employer-employee relationship between the Complainant Nos. 2 to 5 and Respondent No.1 Municipal Corporation of Greater Mumbai.

3. On remand the Labour Court was, therefore, required to consider whether the termination of the service of the Complainant Nos. 2 to 5 by the Respondent No.2 i.e. The Bombay Mothers and Children Welfare Society (the

welfare society for short) w.e.f. 1-2-1997 amounted to retrenchment and whether the said retrenchment was in breach of mandatory requirements of Section 25F of the I.D. Act. The Learned Judge of the Labour Court on remand decided the complaint and by his judgement and order dated 28-2-2006, he was pleased to dismiss the same. The Complainants (except the original Complainant No.2), therefore, filed Revision App(ULP)No. 119/2006, and the Learned Member of the Industrial Court was pleased to dismiss the said Revision by his judgement and order dated 1-10-2007. Hence, this Petition under Article 227 of the Constitution.

4. The World Bank had given financial assistance to the India Population Project and in the welfare of the slum developers within the Mumbai Metropolitan Region. The said Project by name India Population Project V was decided to be implemented with the assistance of the Municipal Corporation of Greater Mumbai and certainly other private agencies preferably Non Governmental Organisations-the welfare society as such and as per the Agreement, the project was to be implemented under the supervision of the said welfare society. The Society, therefore, appointed the Multi-Purpose workers w.e.f. 1-11-1993 upto 31-3-1995. The Project was discontinued by the World Bank from 1-4-1995, however, the Government

of India agreed to give assistance from 1-4-1995 to 31-5-1996 and because of the extension granted by Government of India, the Complainants were continued till 31-5-1996. On 31-5-1996 an agreement was entered and the health posts were agreed to be discontinued. Consequently, there was no scope for the Respondent No.2 to continue the health workers like the Complainants, even though extension granted by the Government of India. However, on 1-6-1996 there was no extension and upto 31-12-1996 they were continued on adhoc basis by the Respondent No.2. It closed the health project on 31-1-1997 as the project by name India Population Project was not continued by the Government of India.

5. Having regard to these facts and also the first appointment of the Complainants for a specific period from 1-11-1993 to 31-3-1995 the Labour Court held that the Complainants were engaged by Respondent No. 2 for a specific project which had a limited tenure and their appointments were not to be continued on expiry of the said project i.e. India Population Project V. Hence, the termination of services of Complainant Nos. 2 to 5 by Respondent No. 2 did not amount to retrenchment as defined under Section 2(oo) of the Industrial Disputes Act and it was covered under the exception of Section

2(oo)(bb) of the I.D. Act as the Complainants were appointed under a specific project and for a specific term and such termination did not amount to retrenchment.

6. The view taken by the Labour Court that the termination of service of Complainants did not amount to retrenchment has been considered and approved by the Industrial Court by a well reasoned order. Mr. Prakash Devdas, the Learned Counsel for the Petitioners submitted that some other set of workers were discontinued in the year 2000 and the Complainants were discontinued arbitrarily w.e.f. 1-2-1997. The case made out by the Complainants before the Labour Court was very specific namely the termination of their employment amounted to retrenchment and there was breach of mandatory provisions of Section 25F of the I.D. Act. As noted earlier these issues have been examined by the Labour Court and considering the evidence it has been held that the said termination did not amount to retrenchment on account of non-renewal of India Population Project V by the World Bank and the Government of India has refuted to extend the said project by releasing funds.

7. The issue of employer-employee relationship between the Complainants and the Municipal Corporation of

Greater Mumbai has also been considered on the basis of evidence and admittedly the appointment letters to Complainant Nos. 2 to 5 were issued by the Respondent No.2. The Project also specifically stated that the implementation of the scheme will be through non Governmental organizations but with the assistance of the local bodies.

8. I am, therefore, satisfied that the concurrent view taken by both the Courts below in holding that (a) the Complainant No. 2 to 5 were not the employees of the Respondent No. 1 Corporation. (b) the termination of service by Respondent No.2-the welfare society did not amount to retrenchment and (c) The Project known as IPP V was not renewed by the World Bank and was not continued by the Government of India beyond 31-12-1996, cannot be termed as perverse or patently erroneous so as to call for interference under the supervisory powers of this Court under Article 227 of the Constitution. The Petition is, therefore, rejected summarily.

9. However, this order will not come in the way of Petitioners to take out appropriate proceedings for recovery of wages for the period they have worked.

[B.H.MARLAPALLE,J.]